

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FORETHOUGHT FINANCIAL SERVICES, INC.,

Plaintiff,

v.

MARGARET McANDREWS and
BRIAN McANDREWS,

Defendants.

02C 7757

Case No.

JUDGE GOTTSCHALL

MASTISTRATE JUDGE SCHENKEL

COMPLAINT FOR DECLARATORY RELIEF AND TO ENFORCE SETTLEMENT AGREEMENT

Plaintiff, Forethought Financial Services, Inc. ("Forethought" or the "Company"), by counsel, for its Complaint for Declaratory Relief and to Enforce Settlement Agreement against Defendants, Margaret McAndrews and Brian McAndrews (the "McAndrews"), states:

I. FACTUAL BACKGROUND

1. Forethought is a corporation duly organized and existing under the laws of the State of Indiana, with its principal place of business in Batesville, Indiana. It is a citizen and resident of the State of Indiana.

2. Margaret McAndrews was and is an employee of Forethought. The McAndrews are citizens and residents of the State of Wisconsin.

3. The amount in controversy exceeds \$75,000, exclusive of interest, cost and attorneys' fees.

4. This claim is brought pursuant to 28 U.S.C. § 2201, which provides in pertinent part that any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaratory relief,

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U.S. DISTRICT COURT
CLERK'S OFFICE

FILED-FDA

whether or not further relief is or could be sought. Such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

5. On October 16 and 17, 2002, the parties to this claim met in Chicago, Illinois for the purposes of holding a mediation of a disputed claim with an independent mediator. This mediation culminated with an agreement as more specifically stated in the Settlement Terms Sheet.

6. Prior to October 16 and 17, 2002, the McAndrews had asserted a claim against Forethought arising out of an incident occurring in Indianapolis, Indiana where Margaret McAndrews was allegedly assaulted by another employee of Forethought following a Company event.

7. All parties decided to attempt to resolve their disputes and differences arising out of the incident in Indianapolis, Indiana through the mediation in Chicago, Illinois.

8. The mediation itself lasted some 16 hours. As indicated above, it ended in an agreement under which Forethought would pay a specified sum to the McAndrews in return for a general release. The pertinent portion of the Settlement Terms Sheet provides as follows:

2. General Release by Margaret McAndrews ("Employee") and Brian McAndrews to company and employees, agents, and corporate affiliates, specifically reserving all rights to assert claims against Mark Giesting.

9. Forethought has attempted to culminate the agreement through fulfillment of its obligations. However, the McAndrews have refused to fulfill their obligations under the mediated settlement agreement.

10. Specifically, the McAndrews have refused and failed to sign a General Release which would release the Company, its employees, agents, and corporate affiliates.

II. BREACH OF CONTRACT

11. Plaintiff incorporates by reference as if fully set forth herein rhetorical paragraphs 1-10 above.

12. The McAndrews, pursuant to the contract, agreed, in exchange for the receipt of a certain payment of money, to provide a General Release to the Company, its employees, agents and corporate affiliates.

13. Forethought has fulfilled and is willing to fulfill all of its obligations under the mediated settlement agreement.

14. The McAndrews have failed and refused to comply with the mediated settlement agreement and have failed and refused to comply with the terms of the mediated settlement agreement as specifically provided for in the Settlement Terms Sheet.

III. DECLARATORY RELIEF

15. Plaintiff incorporates by reference as if fully set forth herein rhetorical paragraphs 1-14 above.

16. Forethought, pursuant to 28 U.S.C. § 2201 requests that the court declare the rights and legal relations of the parties to this suit and provide the following relief:

(a) order that the mediated settlement agreement is enforceable and enforce the terms of the settlement agreement as specifically provided for in the Settlement Terms Sheet;

(b) order the McAndrews to sign a General Release releasing the Company, its employees, agents, and corporate affiliates;

(c) order the McAndrews to comply with the agreement to not commence any action against Forethought, its employees, agents, or corporate affiliates;

(d) order the McAndrews to pay all appropriate costs and attorneys' fees for the necessity to file such an action to enforce the mediated settlement agreement.

WHEREFORE, plaintiff, Forethought Financial Services, Inc., by counsel, prays for the above-requested relief, for the cost of this action, for attorneys' fees, and for all other proper and appropriate relief in the premises.

Respectfully submitted,

FORETHOUGHT FINANCIAL SERVICES, INC.

By: Charles B. Baldwin /cop
One of Its Attorneys

Charles B. Baldwin, #4108-49
Jan Michelsen
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
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(317) 916-1300

Carol A. Poplawski, #06192132
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Two First National Plaza
Twenty-Fifth Floor
Chicago, Illinois 60603
(312) 558-1220

Date: October 28, 2002

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Forethought Financial Services, Inc.

DEFENDANTS

Margaret McAndrews and
Brian McAndrews(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF _____
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Charles B. Baldwin Carol A. Poplawski
Jan Michelsen Ogletree Deakins Law Firm
Ogletree Deakins Law Firm Two First National Plaza
One Indiana Square Chicago, IL 60603
Indianapolis, IN 46204 (312) 558-1220
(317) 916-1300

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX
FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

Declaratory action under 28 U.S.C. § 2201

02 OCT 28 PM

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY		<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 428 USC 158	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assau, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 378 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 850 Securities/Commodities/Exchange	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 875 Customer Challenge	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 12 USC 3410	
<input type="checkbox"/> 195 Contract Product Liability	CIVIL RIGHTS			<input type="checkbox"/> 891 Agricultural Acts	
REAL PROPERTY		PRISONER PETITIONS		<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 610 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 620 Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DWIC/DIWW (405(g))	<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 950 Constitutionality of State Statutes	
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Other		<input type="checkbox"/> 890 Other Statutory Actions	

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 another district (specify) 6 Multidistrict Litigation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
□ UNDER F.R.C.P. 23DEMAND \$ > \$75,000 Check YES only if demanded in complaint:
Declaratory Relief JURY DEMAND: YES NOVIII. RELATED CASE(S) (See Instructions):
IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

10/28/02 Charles B. Baldwin

SIGNATURE OF ATTORNEY OF RECORD

Charles B. Baldwin /cas

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

In the Matter of

Forethought Financial Services, Inc.,

v.

Case Number:

02C 7757

Margaret McAndrews and Brian McAndrews.

JUDGE GOTTSCHALL

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

FORETHOUGHT FINANCIAL SERVICES, INC.

MAGISTRATE JUDGE SCHENKIER

DOCKET

OCT 29

(A)		(B)	
SIGNATURE <i>Charles B. Baldwin/par</i>		SIGNATURE <i>Carol A. Poplawski</i>	
NAME Charles B. Baldwin		NAME Carol A. Poplawski	
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IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 06192132	
MEMBER OF TRIAL BAR? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		MEMBER OF TRIAL BAR? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		TRIAL ATTORNEY? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
		DESIGNATED AS LOCAL COUNSEL? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
(C)		(D)	
SIGNATURE <i>Jan Michelsen/par</i>		SIGNATURE	
NAME Jan Michelsen		NAME	
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E-MAIL ADDRESS Jan.Michelsen@odnss.com		E-MAIL ADDRESS	
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)		IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)	
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DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input type="checkbox"/>		DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	